Supreme Court, U.S.
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No. 00-1108

IN THE
Supreme Court of the United States

ADAMS OUTDOOR ADVERTISING,

Petitioner,

v.

CITY OF EAST LANSING,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT FOR THE STATE OF MICHIGAN

BRIEF IN OPPOSITION

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STATEMENT OF THE CASE

A. History of Sign Regulation

This case involves the challenge by Adams Outdoor Advertising, Inc. ("Adams") to the constitutionality of the East Lansing Sign Code as it applies to two sets of rooftop billboards located in East Lansing, Michigan. In order to consider this issue, a brief history of sign regulation in East Lansing is in order. Prior to the adoption of the current Sign Ordinance there were no formal regulations regarding height, size, and placement of signs and billboards in East Lansing, except through regulations regarding structural integrity so that they would not fall down or blow over.

In the late 1960s and early 1970s, the City undertook a study of comprehensive sign regulations. In 1973, East Lansing commissioned a report entitled "Traffic Safety Considerations in Roadside Displays". This report recommended detailed, uniform standards with respect to height, size, placement, sign clearance and setback of signs so as to avoid confusing or misleading traffic, to eliminate vision obstructions necessary for traffic safety, and to otherwise improve the public safety along the City's major streets. The report was incorporated into a comprehensive report and a set of ordinance recommendations were made by a subcommittee of the Planning Commission and Planning staff to the City Council in the fall of 1973.

On October 7, 1975, the Sign Ordinance (Ordinance No. 382) went into effect, the result of which was to regulate signs and billboards throughout the city. Hundreds of signs within the city did not meet the height, size, placement and location requirements of the Sign Ordinance. Ordinance

No. 382 originally contained an amortization provision at Section 8.39(8) which provided that all such signs or billboards would have to conform or be removed within eight (8) years from the effective date of the ordinance. This deadline was extended twice. Pursuant to the terms of the ordinance and subsequent amendments, those signs or billboards which did not meet the requirements of the ordinance as of October 7, 1975, including Adams' rooftop billboards, have had a period of approximately 12 years within which to comply.

B. Adams' Rooftop Billboards in East Lansing

Adams owns rooftop billboards on property it leases from two East Lansing property owners. The rooftop billboards located at 1108 E. Grand River are on the premises owned by JLN of Mid-Michigan, LLC; the location is above a building used as a party store. The rooftop billboards at 111 N. Harrison are on property owned by David H. Krause; the location is above a convenience store and a store supplying silk screening, logos and art supplies. The East Grand River billboards were built in 1968 at an estimated cost of $1,714; the North Harrison billboards were constructed in 1955 at an estimated cost of $1,200. The current lease for East Grand River was executed on July 15, 1996, for a term of ten years, with annual installments of $3,200 for the first five years and increasing to $4,000 for the remaining five years. The current North Harrison lease was executed in 1998 and extends for five years, with lease payments of $6,000 per year.

Under the East Lansing ordinance, roof signs and billboards are prohibited. They were permitted to be maintained lawfully from the effective date of the ordinance,

October 7, 1975, until May 1, 1987, pursuant to the provision at Section 8.39 which related to existing signs. Section 8.39 provides in pertinent part as follows:

> Section 8.39 *Alterations to Signs*. Any existing sign on the effective date of this Chapter or any amendment hereto, which does not at that time comply with all of the provisions here, including any amendment:
>
> * * *
>
> (8) Shall not be placed, maintained, or displayed by any person on or after May 1, 1987
>
> (Pet. App., pp. 59-60)

While not the subject of this litigation, Adams has other freestanding billboards in East Lansing on property that it owns.

C. History of Litigation

On August 21, 1987, Adams filed suit against the City seeking to declare as unconstitutional the City's Sign Code as applied to the rooftop billboards, among other billboards, which are the subject of this litigation.

The suit has been ongoing since 1987. As it pertains to the billboards owned by Adams (including the rooftop billboards), the parties have twice been before the Michigan Court of Appeals, which had twice affirmed the Ingham County Circuit Court rulings (Hon. Thomas L. Brown presiding) that the East Lansing Sign Code was

unconstitutional, and twice before the Michigan Supreme Court, which reversed the decisions of the Court of Appeals and the Ingham County Circuit Court. In the Supreme Court's first decision, *Adams Outdoor Advertising v. City of East Lansing*, 439 Mich. 209, 483 N.W.2d 38 (1992), the Court held that the City had authority under the Michigan Home Rule Act to regulate signs including eliminating nonconforming signs through the use of an amortization provision; as noted before, the sign ordinance went into effect in October, 1975, and allowed Adams to maintain its rooftop billboards through May 1, 1987. In its second decision, *Adams Outdoor Advertising v. City of East Lansing (Adams II)*, 463 Mich. 17, 614 N.W.2d 634 (2000), the Michigan Supreme Court held that the City was not obligated to pay compensation to Adams when it required the removal of the rooftop billboards, as there was no taking. The Court found that the leases included, at most, the right to display roof top billboards subject to "reasonable police power regulations." (Pet. App., p. 9.) The Court found that under the categorical taking's analysis or the balancing test, there was no taking. (Pet. App., p. 10.)

Adams has now filed its petition for a Writ of Certiorari. It should be noted that Adams, along with the lessors, has also filed suit in the U.S. District Court for the Western District of Michigan, seeking to overturn the decision of the Michigan Supreme Court. *See Adams Outdoor Advertising v. City of East Lansing*, No. 5:00-CV-119.

REASONS FOR DENYING THE WRIT

I.

THE DECISION OF THE MICHIGAN SUPREME COURT DOES NOT CONFLICT WITH THIS COURT'S RULINGS IN *UNITED STATES v. GENERAL MOTORS*, 323 U.S. 373, 65 S. Ct. 357; 89 L. Ed. 311 (1945) AND *UNITED STATES v. PETTY MOTOR CO.*, 327 U.S. 372, 66 S. Ct. 596, 90 L. Ed. 729 (1946) WHERE THE ROOFTOP LEASES THAT WERE IN EFFECT AT THE TIME THE ORDINANCE WAS ADOPTED HAVE LONG EXPIRED.

In the case at bar, Adams has leased billboard space at the two locations in East Lansing from the owners of the real property. As noted, the current lease for the East Grand River Avenue was executed on July 15, 1996, for a ten-year period, while the current lease at 111 N. Harrison commenced on April 1, 1998, for a period of five years. These leases, however, were not in effect when the East Lansing sign ordinance went into effect. By their terms, those leases expired long ago. Leases for billboard space typically would extend for five years only. Thus, the leases that were in effect during the amortization period between when the ordinance first went into effect (October 1, 1975) and when the billboards were to be removed (May 1, 1987) have long expired.

As this is the factual circumstance in this case, the cases cited by the Petitioner, *United States v. General Motors*, 323 U.S. 373, 65 S. Ct. 357, 89 L. Ed. 311 (1945) and *United States v. Petty Motor Co.*, 327 U.S. 372, 66 S. Ct. 596, 90 L. Ed. 729 (1946) are completely inapplicable to the case

at bar. In both of those cases, the United States, pursuant to the Second War Powers Act, 50 U.S.C.A. Appendix, § 632, condemned the leasehold interests of the occupants in order for the government to take control of and use the property for the war effort. In each case, at the time of condemnation, there was a certain number of years left on the leases then in force. The United States Government occupied the premises for the balance of the term of the leases and the question before this Court was how to value those interests in the hands of the lessees. *See General Motors Corp.* at 380 and *Petty Motors* at 376. The government action in those cases effected a seizure of the tenants' interest in the leases in force at the time of the seizure.

In the case at bar, the leases in effect in 1975 when the ordinance went into effect, have long expired. At that time, the ordinance did not prevent Adams from leasing its billboard and honoring the balance of its lease. As the leases were typically five-year renewals, the leases were renewed, without running afoul of the ordinance, and Adams' predecessor, Central Advertising Company, has received the benefits of the leases. Under that circumstance, there was no taking as Central Advertising presumptively received all the monies owed under the terms of its leases without interference from the City.

At some point, however, upon the renewal of the leases, Adams undertook to enter into leases which extended beyond the time in which it was lawful, under the City's ordinance, to maintain the rooftop billboards. The question is, whether Adams is entitled to compensation when it entered into a leases that violated the ordinance by providing for the display and use of the rooftop billboards after it was unlawful to maintain them. Adams has cited no case that supports its

position. Plainly, *General Motors* and *Petty Motor* do not stand for that proposition. The essence of Adams' argument is that once it has leased space for its billboards, regardless of the term of those leases, its continued right to use that space is immutable and subject to no further government regulation, without payment of compensation. For the reasons set forth hereinafter, that position is completely untenable.

The Michigan Supreme Court decision in this case does not conflict with *General Motors* or *Petty Motor*, and has not decided an important federal question in a way that conflicts with those decisions. The arguments of Adams are without merit and this Court should deny the petition.

II.

ADAMS HAS NO VESTED RIGHT IN THE REGULATION-FREE CONTINUANCE OF THE USE OF ITS ROOFTOP BILLBOARDS.

Adams does not have the vested right to maintain its existing billboards, and does not have the unfettered right to conduct its business immune from reasonable regulation. *See Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 508-509, 101 S. Ct. 2882, 692 L. Ed. 2d 2800 (1981). Indeed, the City of East Lansing, under Michigan's Home Rule Cities Act, was granted the specific enumerated authority to regulate signs and billboards within its jurisdiction. *See* MCLA 117.4i(5); MSA 5.2082(5).

It is clear that municipalities, for traffic and aesthetic reasons, may regulate billboards, even if it means the

complete elimination of off-premises advertising. In one of its several opinions, this Court wrote in *Metromedia*, at 509-511:

> [T]he California Supreme Court agreed with many other courts that a legislative judgment that billboards are traffic hazards is not manifestly unreasonable and should not be set aside. We likewise hesitate to disagree with the accumulated, common-sense judgments of local lawmakers and of the many reviewing courts that billboards are real and substantial hazards to traffic safety. There is nothing here to suggest that these judgments are unreasonable.
>
> * * *
>
> We reach a similar result with respect to the second asserted justification for the ordinance — advancement of the city's aesthetic interests. It is not speculative to recognize that billboards by their very nature, wherever located and however constructed, can be perceived as an "aesthetic harm." San Diego, like many States and other municipalities, has chosen to minimize the presence of such structures.

The City plainly can enforce its regulations against the "existing" billboards of Adams. Adams is not immune from the ordinances of the City and could be compelled to meet the requirements of those regulations without the City being required to make restitution or to pay compensation.

In its opinion, the Michigan Supreme Court did not break new legal ground when it wrote:

> Accordingly, even before enactment of the sign code, the leases at issue did not include an absolute right to display signs on the rooftops. At most, the leases included a right to display signs on the rooftops subject to reasonable police power regulations that did not effect a taking of the lessors' interests.

(Pet. App., p. 9.)

This is plainly consistent with existing federal constitutional law. It has long been recognized that regulations promulgated pursuant to police powers may have a significant impact on businesses and the use of property, and no claim of a taking can be sustained. Whether affecting real property or not, regulations have historically applied to structures built prior to the enactment of such regulations without running afoul of the Takings Clause. The leading case is *Queenside Hills Realty Co. v. Saxl*, 328 U.S. 80, 66 S. Ct. 850, 90 L. Ed. 1096 (1946). In that case, a question arose whether certain New York building regulations (requiring sprinkling systems in certain lodging houses) could be imposed on structures which were built prior to the enactment of those building regulations. The defendant argued that it would be a denial of due process for those regulations to be imposed on properties which, at the time of their construction, met with the then existing regulations. The defendant argued that it would constitute a taking without just compensation and as such was not enforceable.

This Court rejected that argument. Justice Douglas, writing on behalf of the Court, held:

> But the legislature may choose not to take the chance that human life will be lost in lodging house fires and adopt the most conservative course which science and engineering offer. It is for the legislature to decide what regulations are needed to reduce fire hazards to the minimum. Many types of social legislation diminish the value of the property which is regulated. The extreme cases are those where in the interest of the public safety or welfare the owner is prohibited from using his property. *Reinman v. Little Rock*, 237 U.S. 171, 35 S.Ct. 511, 59 L.Ed. 900; *Hadacheck v. Sebastian*, 239 U.S. 394, 36 S.Ct. 143, 60 L.Ed. 348, Ann.Cas. 1917B, 927; *Pierce Oil Corp. v. Hope*, 248 U.S. 498, 39 S.Ct. 172, 63 L.Ed. 381. We are dealing here with a less drastic measure. ***But in no case does the owner of property acquire immunity against exercise of the police power because he constructed it in full compliance with the existing laws. Hadacheck v. Sebastian***, supra, 239 U.S.at page 410, 36 S.Ct. at page 145, 60 L.Ed. 348, Ann.Cas. 1917B, 927. And see *Chicago, B. & Q.R. Co. v. Nebraska*, 170 U.S. 57,18 S.Ct. 513, 42 L.Ed. 948; *Hutchinson v. Valdosta*, 227 U.S. 303, 33 S.Ct. 290, 57 L.Ed. 520. The police power is one of the least limitable of governmental powers, and in its operation often cuts down property rights. *Block v. Hirsh*, 256 U.S. 135, 155, 41 S.Ct. 458, 459, 65 L.Ed. 865, 16 A.L.R. 165. And see *Plymouth Coal Co. v. Pennsylvania*, 232 U.S. 531, 34 S.Ct. 359, 58 L.Ed. 713. *Id* at 83 [emphasis supplied]

In *Queenside Hills*, the property owner maintained essentially the same argument as Adams in the instant case. That is, that Adams' structures (the billboards) met the regulations of the day when constructed and therefore the new regulations cannot now be imposed. As in *Queenside Hills*, this argument should be rejected and the conclusion reached that no "taking" has occurred. *See also Sign Supplies of Texas v. McConn*, 517 F. Supp. 788 (S.D. Tex. 1980) [the making illegal of portable signs].

Adams could have no reasonable expectation that the billboards used in its advertising business would remain "regulation free" in the future. As Adams had no vested right to a regulation-free environment, the City, under its police powers, *always* retained the power to regulate existing billboards, even if their removal was required.

The City's ordinance requiring removal of the rooftop billboards is constitutional and the recognition of the Michigan Supreme Court that the City of East Lansing could regulate billboards is not in conflict with any decision of this Court. The Petition for a Writ of Certiorari should be denied.

III.

THE MICHIGAN SUPREME COURT'S RULING THAT THE CITY HAD NOT UNCONSTITUTIONALLY TAKEN THE PETITIONER'S INTEREST IN ITS ROOFTOP BILLBOARDS DOES NOT CONFLICT WITH THIS COURT'S RULING IN *LUCAS v. SOUTH CAROLINA COASTAL COUNCIL*, 505 U.S. 1003, 112 S. Ct. 2886, 120 L. Ed. 2d 798 (1992).

In the case at bar, the City of East Lansing has employed a time-honored method in regulating signage within a community. It has established a time period between the effective date of the regulations and a date when all signs, irrespective of the date they were erected, must comply. This period of time is called an "amortization period" and provides the sign owner with a certain additional useful life of the sign before it must be brought into conformance with the then current sign regulations.

There are many cases from jurisdictions all over the country which hold that no compensation is required when eliminating billboards or making them conform to current regulations if a reasonable period for compliance and cost recovery is provided. One of the leading cases is *Art Neon Co v. City and County of Denver*, 488 F.2d 118 (10th Cir. 1973). In concluding that by providing an amortization period that is reasonable in length, there would be no taking if existing signs were removed, the United States Court of Appeals held:

> It is obvious that in the balancing process some loss or burden will fall on a sign owner or user.

It is not required that the nonconforming property concerned have no value at the termination date. The plan need not be so constructed. The many and varied valid exercises of police power in other areas so demonstrate the impact on the individual. See *Goldblatt v. Hempstead*, 369 U.S. 590, 82 S.Ct. 987, 8 L.Ed.2d 130; *United States v Central Eureka Mining Co.*, 357 U.S. 155, 78 S.Ct. 1097, 2 L.Ed.2d 1288; *Hadacheck v Sebastian*, 239 U.S. 394, 36 S.Ct. 143, 60 L.Ed. 348; *Mugler v Kansas*, 123 U.S. 623, 8 S.Ct. 273, 31 L.Ed. 205. The legislative determination must only meet the test of "reasonableness," that is, the plan for termination must be "reasonable." *Standard Oil Co. v Marysville*, 279 U.S. 582, 49 S.Ct. 430, 73 L.Ed. 856; *National Advertising Co. v Monterey*, 1 Cal.3d 875, 83 Cal.Rptr. 577, 464 P.2d 33 (Cal.) This is not a test of concept of "just compensation." The Court in *United States v Central Eureka Mining Co.*, 357 U.S. 155, 78 S.Ct. 1097, 2 L.Ed.2d 1288, said: "[T]he mere fact that the regulation deprives the property owner of the most profitable use of his property is not necessarily enough to establish the owner's right to compensation." And further in *Miller v Schoene*, 276 U.S. 272, 48 S.Ct. 246, 72 L.Ed. 568: "[W]here the public interest is involved preferment of that interest over the property interest of the individual, to the extent even of its destruction, is one of the distinguishing characteristics of every exercise of the police power which affects property." *Id* at 121-122.

Art Neon followed a long line of cases holding that amortizing signs, whether on-premises or off-premises, over a reasonable period is not a constitutionally infirm taking. In *Grant v. Mayor and City Council of Baltimore*, 212 Md. 301, 129 A.2d 363, 367 (1957), wherein the Court held that the amortization provisions of a local ordinance requiring the removal of billboards from residential zoning districts was not unconstitutional, the Maryland Court of Appeals, citing *City of Los Angeles v. Gage*, 127 Cal. App. 2d 442, 274 P.2d 34 (1954), stated:

> The elimination of existing uses within a reasonable time does not amount to a taking of property nor does it necessarily restrict the use of property so that it cannot be used for any reasonable purpose. Use of a reasonable amortization scheme provides an equitable means of reconciliation of the conflicting interests in satisfaction of due process requirements.

Since that time, there have been numerous decisions upholding the amortization of signs and billboards, and finding that there was no taking. *See Georgia Outdoor Advertising v. City of Waynesville*, 900 F.2d 783 (4th Cir. 1990); *Naegele Outdoor Advertising v. City of Durham*, 844 F.2d 172 (4th Cir. 1988), *after remand*, 803 F. Supp 1068 (M.D. N.C., 1992), *aff'd*, 19 F.3d 11 (4th Cir. 1994), *cert. denied*, 513 U.S. 928, 115 S. Ct. 317, 130 L. Ed. 2d 278 (1994); *Fayetteville v. McIlroy Bank & Trust Co*, 278 Ark. 500, 647 S.W.2d 439 (1983); *Suffolk Outdoor Advertising Co. v. Southampton*, 60 N.Y.2d 70, 455 N.E.2d 1245 (1983). *See generally, Validity of Provisions for Amortizing Nonconforming Uses*, 8 A.L.R. 5th 391 (1992).

It is significant that many of these decisions have been decided *after* the U.S. Supreme Court's decision in *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 112 S. Ct. 2886, 120 L. Ed. 2d 798 (1992). *See, for example, Barton Wilson v. City of Louisville*, 947 F. Supp. 948 (W.D. Ky. 1994).

The most thorough analysis of the amortization issue after the *Lucas* decision occurs in the District Court decision of *Naegele, supra*. In that case, the district court (on remand) went through an extensive analysis to determine whether the Durham, North Carolina, ordinance which required the removal of 103 of 270 billboards after a 5½-year amortization period violated the United States Constitution. In addition to looking at the term of the amortization period, the trial court examined a number of factors to determine whether the ordinance could be upheld. It concluded that the ordinance was constitutional.

The first issue considered by the court was what was Naegele's "unit of property" that could be taken (*Id.* at 1073). The court held that it was not the individual signs but, rather, the whole of Naegele's signs in the Durham area. *Id.* at 1074. *See also Naegele* at 844 F.2d at 176.

During the trial in this matter, certain data regarding Adams' billboard business was introduced into evidence. Adams advertises in the entire Lansing, Michigan, metropolitan market. Using the year ending December 31, 1995, gross revenues were $8,994,754, on revenues from the hundreds of billboards in the Lansing area. The net profit was $3,177,773. The total profit of the rooftop billboards in East Lansing in 1995 (that is, one-half of the gross revenues of $11,404 from the N. Harrison billboards and $10,395 from

the E. Grand River billboards) was $10,899.50. That profit represents .34% of the profit earned by Adams in the metropolitan Lansing area. The City's ordinance would have a negligible effect on Adams' operation in the Lansing area, and it pales in comparison to impact of the Durham ordinance where the impacted billboards represented 29.7% of the total revenues of Naegele. Like the coal pillars referenced in *Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470, 107 S. Ct. 1232, 94 L. Ed. 2d 472 (1987), the individual signs should not be viewed as separate "units" of property.

Furthermore, even if this Court considered all of East Lansing as a separate unit, the same result would occur. Adams has built an additional billboard with two sign faces since the inception of this lawsuit. Even if Adams were required to eliminate the rooftop signs, Adams would have a minimum of three billboards with six faces within the City of East Lansing. Such a reduction does not constitute the deprivation of "all economically beneficial use" of Adams' property in East Lansing and, as significant rights remain, there can be no claim of taking. *See Penn Central Transportation Co. v. New York City*, 438 U.S. 104, 130-131, 98 S. Ct. 2646, 2662, 57 L. Ed. 2d 631 (1978); *Naegele* at 1072.

The trial court in *Naegele* also looked at the reasonableness of the amortization period and found that for an amortization period to be reasonable, it must give the property owner a reasonable opportunity to recoup or minimize the loss of the use of this property by the end of the amortization period. *Id.* at 1077. In *Naegele*, the court found that the amortization period did not allow *Naegele* to recover the present value of the income stream over the remaining useful life of the signs, but nonetheless found the ordinance constitutional.

The Court stated:

> Whether or not the revenue recovered during the amortization period might be "just compensation" if a "taking" had occurred, the benefit conferred by the grant of an amortization period may be taken into account in considering the economic impact of the regulation. *See Penn Central*, 438 U.S. at 137, 98 S.Ct. at 2666 (landowner's transferrable development rights conferred by government program mitigate financial burden imposed even if not "just compensation"). By virtue of the amortization period granted in the ordinance, Naegele has earned more than $1.7 million in revenue and has had 5½ additional years of use of the disputed signs. Based on its earnings during the amortization period, Naegele will lose this revenue, which includes an estimated $256,583.44 in sharing revenue, during a comparable time period after the ordinance is enforced. Nonetheless, Naegele has not contended that its outdoor advertising business in the Durham metro market will no longer be viable after the ordinance requires removal of the affected signs. Naegele has recovered nearly twice the fair market value of the disputed signs during the amortization period, and there is no evidence that Naegele will not be able to realize a reasonable return on its remaining signs.

Id. at 1078-1079.

Even given that the cost was not fully recovered, the ordinance in *Naegele* was still deemed to be constitutional.

The effect on Adams, in the metropolitan Lansing area, for the loss of these rooftop signs is negligible. During the amortization period, Adams has maintained its rooftop billboards. The ruling of the Michigan Supreme Court does not conflict with *Lucas* because there is no taking of all of the economic value of Adams' property. There is no merit to Adams' argument and the petition to issue the writ should be denied.

IV.

THE MICHIGAN SUPREME COURT DID NOT COMMIT REVERSIBLE ERROR WHEN IT FOUND THAT ADAMS HAD NO REASONABLE EXPECTATION THAT IT COULD MAINTAIN THE BILLBOARDS AFTER THE DATE DESIGNATED IN THE CITY CODE.

Adams raises as its final issue the claim that it was error on the part of the Michigan Supreme Court to conclude that Adams had no reasonable investment-backed expectation that it could maintain the signs at the rooftop locations after they were proscribed by the City's ordinance., citing as authority this Court's granting of certiorari in *Palazzolo v. Rhode Island,* Supreme Court Docket No. 992047, *cert granted*, 69 U.S. Law Week 3257 (October 10, 2000). Adams argues that as this Court has granted leave in that case to consider, among other issues, whether a land owner can assert a regulatory takings claim when the regulations that affected the taking went into effect prior to the land owner's ownership, that the Michigan Supreme Court must have erred. A review of the issue, however, will disclose that it is not meritorious and does not form a basis upon which this Court should grant the petition for writ of certiorari.

It should first be noted that even assuming Adams' argument is correct, Adams cannot prevail. As noted before, Adams does not prevail because it cannot prevail under the "unit of property" analysis which is central to the takings analysis crafted by this Court. *See Keystone Bituminous* and *Penn Central*. A fair reading of the Michigan Supreme Court's decision finds that whether Adams had a "reasonable investment-backed expectation" was but one of the issues in which Adams' arguments failed. This issue, even if Adams is correct, affords no basis of relief.

Secondly, the Rhode Island Supreme Court, in *Palazzolo* was confronted with an entirely different factual circumstance than the Michigan Supreme Court. The interest at stake for the land owner in *Palazzolo* was markedly different than Adams' interest in the leased air space above the buildings where its billboards are located. Regardless of how this Court treats the unit of property issue, it appears indisputable that Palazzolo cannot use the 18 acres at all. The City's prohibition on the use of the air space for billboards and signs notwithstanding, the land owner retains significant uses and value to his property after the effective date of this ordinance. For example, the airspace restrictions for display of signs does not prevent the landowner from adding additional floors to the building. The effects on the landowner are minimal and the effects of the removal of these two signs on Adams' billboards in the metropolitan Lansing area are negligible. The factual circumstances are completely different and, irrespective of what this Court does in the *Palazzlo* case, provides Adams with no support in its claim.

Finally, in taking the argument full circle, Adams never had the expectation, nor did its lessors, that the air space where its billboards were located would always be regulation

free. There are, for example, thousands of examples of zoning ordinances throughout the United States which restrict the heights of buildings depending upon the zones where the property is located. *See Welch v. Swase*, 214 U.S. 91, 29 S. Ct. 567, 53 L. Ed. 923 (1907). Air space above buildings is clearly subject to regulation. Given that fact, Central Advertising, Adams' predecessor, never had the expectancy of a regulation-free environment, once its rooftop billboards were erected. As its predecessor could not have had that expectation, Adams likewise would have no such expectation.

Adams does not raise a meritorious issue and the petition for the writ of certiorari should be denied.

CONCLUSION

The Michigan Supreme Court's decision is plainly consistent and based upon the sound principles enunciated by this Court. Adams has provided no basis for this Court to exercise its discretion to grant the writ. The City of East Lansing hereby requests that this Court deny Adams' petition for a writ of certiorari.

Respectfully submitted,

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